IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

R.K. Tikku Vs. Firm Shri Laxmi Industrial Company

S.B. CIVIL FIRST APPEAL No.188/1990 against the judgment & decree dated dated 2.8.1990 passed by the ADJ No.3, Kota in Civil Suit No.390/1988.

Date of Judgment :: August 8, 2006

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. A.K. Pareek for the appellant.
Mr. Vinok Kumar Tamoliya for Mr. N.K. Maloo for the respondent.

BY THE COURT:

1. The present appeal of plaintiff R.K. Tikku is directed against the judgment of learned ADJ No.3, Kota dated 2.8.1990 dismissing the suit filed by him for recovery of a sum of Rs.15,000/-.

2. While deciding issue No.1 as to “whether the sum of Rs.15,000/- alleged to have been deposited on 19.11.1981 with the defendant is under a forged receipt and whether the defendant at all borrowed the said amount”, the learned trial court found that burden of this issue placed on the defendant was duly discharged by the defendant and the defendant had established that the

receipt of the alleged deposit of Rs.15,000/- Ex.1 was a false and forged receipt and, therefore, the suit was liable to be dismissed.

3. Mr. A.K. Pareek, learned counsel appearing the the appellant submitted that since the signatures on the said document Ex.1 fixed deposit receipt was admitted by the partner of the defendant firm M/s. Shri Laxmi Industrial Company, namely Dw.1 Rameshwar Kacholia that the signatures on the said receipt was his, therefore, the suit deserved to be decreed and he also submitted that the plea of the defendant that the said partner was not available on the material date 19.11.1981 in Kota but was away to Jaipur was not proved by the defendant and, therefore, the same could not dislodge the said document Ex.1 dated 19.11.1981. He, therefore, submitted that the judgment of the learned trial court dismissing the suit was not sustainable and the suit deserved to be decreed.

4. Per contra, Mr. Vinod Kumar Tamoliya appearing for Mr. N.K. Maloo vehemently submitted that there is no error in the judgment of the learned trial court and the defendant had amply established before the learned trial court that the said Receipt Ex.1 was a false and forged receipt and the same was forged by the son of plaintiff S.K. Tikku who was employed in the defendant firm as salesman and was not even produced before the court by

the plaintiff for examination and since during the course of business such blank letter-heads signed by the partners were given to such employees for being further given to the Bhoomi Vikas Bank where the tractors sold by the defendant firm were financed and such receipts were required in the normal course of business and, therefore, if a partner was out of town, such blank letter-heads signed by the partner were given and it may be that the said employee S.K. Tikku misused any such letter-head and forged the said document Ex.1 receipt thereon. He further submitted that plaintiff, father of the said employee was Deputy Jailor and was suspended from service on the charges of misconduct and he was subsequently removed from service in Sarover Talkies also. He further urged that the said partner who is alleged to have been signed the said receipt was out of Kota on the material date 19.11.1981 and he produced Ex.4 before the learned trial court showing the meeting of said partner with Mr. K.S. Sahi of Escort Limited, Jaipur for their business meeting on 19.11.1981 at Jaipur. Pointing out the full wordings of the document Ex.1, he also submitted that the said receipt clearly appears to be a forged document because the language thereof is not the normal receipt for a sum borrowed by a business concern. He submitted that the words “this receipt is issued as a document as per procedure in the Banks and Post Offices as guarantee for repayment of the original amount along with interest” and

the last two lines in the said document namely “interest due on 19th November, 1984 will be paid at the time of renewal, if the same is demanded by the depositor” are absolutely unusual and uncalled for sentences in the alleged fixed deposit receipt which casts serious doubt on the validity of the said document. He further submitted that the defendant firm had throughout strong financial standard and no other such private loans were ever taken by the said firm and it appears that the said employee of the firm, son of the plaintiff had misused such blank letter-head and forged said receipt so as to claim such amount from the defendant firm. He also submitted that the said son employee had purchased a motorcycle from the said firm and the amount due against that was also not paid by the said employee which according to him was sold to him on 4.4.1978 for a sum of Rs.6109.17 out of which a sum of Rs.2259/- with interest was still payable to the firm.

5. Having considered the rival submissions and upon perusal of the impugned judgment and the evidence on record, this Court is of the view that the present appeal has no force and the same is liable to be dismissed.

6. The learned trial court while deciding the issue No.1 has clearly found that the signatory of Ex.1 Rameshwar Kacholia was not available in Kota on the

material date 19.11.1981 as he was away to Jaipur and had a business meeting with Estorts Limited and in the cross-examination of plaintiff R.K. Tikku he had clearly admitted that on the alleged date of deposit of Rs.15,000/- i.e. on 19.11.1981 he has only met the other brother Raju and not the signatory Rameshwar Kacholia, therefore, the said amount cannot be said to have been given on the said receipt Ex.1 to the defendant firm or to Mr. Rameshwar Kacholia. The said receipt neither bore a revenue stamp. In the absence of the plaintiff son S.K. Tikku the employee of the defendant firm himself having been produced by the plaintiff and examined before the learned trial court, in the opinion of this Court, was a serious dent in the case of the plaintiff. The document Ex.1 the alleged fixed deposit receipt also does not inspire confidence. The said document typed in a uniform capital letters on a type writer having the seal and signature of the partner does not appear to be a normal receipt given on acceptance of any deposit by a business concern, particularly the last two lines that interest due on 19th November, 1984 will be paid at the time of renewal, if the same is demanded by the depositor, clearly militates against rest of the writing in the said document Ex.1 whereby the said sum of Rs.15,000/- is said to have been accepted by the defendant firm at the rate of interest of 15% per annum and in the first part of the receipt the said principal amount with interest is said

to be payable on the expiry of three years i.e. 19th November, 1984. The portion of the said document that this receipt is issued as a document as per procedure in the Banks and Post Offices as guarantee of repayment of the original amount along with interest also casts serious doubt on the veracity and validity of this document because there is no such procedure in the Banks or Post Offices which renders such amount of fixed deposit receipt as any guarantee for repayment.

7. Therefore, it appears, as rightly held by the learned trial court, that the said receipt was a forged document and no such loan was really taken by the defendant firm from the plaintiff. No other point was pressed before this Court.

8. In view of this, this Court finds no force in the present appeal and the same is accordingly dismissed. No order as to costs.

(Dr.VINEET KOTHARI),J.

VS/